

ORIGINAL

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9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA

11 Tony Martinez,

12 Plaintiff,

13 vs.

14 Chelsea Financing Partnership, LP;  
15 Kenneth Cole Productions, Inc. dba  
16 Kenneth Cole #5017; Tommy  
17 Hilfiger Retail, LLC dba Tommy  
18 Hilfiger Store #28; Banana Republic,  
19 LLC dba Banana Republic Factory  
20 Store #1997; Grace Holmes, Inc. dba  
21 J. Crew Store #0030; Barneys, Inc.  
22 which will do business in California  
23 as Barneys New York dba Barneys  
24 New York Outlet #415; The Gap,  
25 Inc. dba Gap Outlet #1042; Lucky  
26 Brand Dungarees Stores, Inc. dba  
27 Lucky Brand Jeans Outlet #3337;  
28 Levi's Only Stores, Inc. dba Dockers  
Outlet Store #520; PVH Retail  
Stores, Inc. dba Calvin Klein Store

CV 10 2437  
No.

Plaintiff's Complaint

EDL

1 #048; Retail Brand Alliance dba )  
2 Brooks Brothers #6704; Zumiez, Inc. }  
3 dba Zumiez #139; Nautica Retail }  
4 USA, Inc. dba Nautica Napa #0030; }  
5 Levi's Only Stores, Inc. dba Levi's }  
6 Outlet Store #312, }  
7 Defendants.  
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I. SUMMARY

1. This is a civil rights action by plaintiff Tony Martinez (“Martinez”) for discrimination at the building, structure, facility, complex, property, land, development, and/or surrounding business complexes known as:

Napa Premium Outlet Common Areas

629 Factory Stores Drive

Napa, California 94558

(Assessor’s Parcel No. 004.420.017)

(hereafter “the Napa Premium Outlets Common Area Facility”)

Kenneth Cole #5017

591 Factory Stores Drive

Napa, California 94558

(hereafter “the Kenneth Cole Facility”)

Tommy Hilfiger Store #28

629 Factory Stores Drive

Napa, California 94558

(hereafter “the Tommy Hilfiger Facility”)

Banana Republic Factory Store #1997

Factory Stores Drive

Napa, California 94558

(hereafter “the Banana Republic Facility”)

J. Crew Store #0030

867 Factory Stores Drive

Napa, California 94558

(hereafter “the J. Crew Facility”)

Barneys New York Outlet #415

821 Factory Stores Drive

Napa, California 94558

(hereafter “the Barneys New York Facility”)

1 Gap Outlet #1042  
2 629 Factory Stores Drive  
3 Napa, California 94558  
4 (hereafter “the Gap Facility”)

5 Lucky Brand Jeans Outlet #3337  
6 629 Factory Stores Drive  
7 Napa, California 94558  
8 (hereafter “the Lucky Facility”)

9 Dockers Outlet Store #520  
10 653 Factory Stores Drive  
11 Napa, California 94558  
12 (hereafter “the Dockers Facility”)

13 Calvin Klein Store #048  
14 705 Factory Stores Drive  
15 Napa, California 94558  
16 (hereafter “the Calvin Klein Facility”)

17 Brooks Brothers #6704  
18 637 Factory Stores Drive  
19 Napa, California 94558  
20 (hereafter “the Brooks Brothers Facility”)

21 Zumiez #139  
22 629 Factory Stores Drive, Suite 0649  
23 Napa, California 94558  
24 (hereafter “the Zumiez Facility”)

25 Nautica Napa #0030  
26 701 Factory Stores Drive  
27 Napa, California 94558  
28 (hereafter “the Nautica Facility”)

Levi’s Outlet Store #312  
Factory Stores Drive  
Napa, California 94558  
(hereafter “the Levi’s Facility”) (collectively, “the Facilities”)

1           2. Pursuant to the Americans with Disabilities Act of 1990, (42 U.S.C.  
2 §§ 12101 et seq.), and related California statutes, Martinez seeks damages,  
3 injunctive and declaratory relief, and attorney fees and costs, against:

- 4       • Chelsea Financing Partnership, LP (hereinafter the “Napa Premium  
5       Outlets Common Area Defendant”);
- 6       • Kenneth Cole Productions, Inc. dba Kenneth Cole #5017 (hereinafter the  
7       “Kenneth Cole Defendant”);
- 8       • Tommy Hilfiger Retail, LLC dba Tommy Hilfiger Store #28 (hereinafter  
9       the “Tommy Hilfiger Defendant”);
- 10      • Banana Republic, LLC dba Banana Republic Factory Store #1997  
11      (hereinafter the “Banana Republic Defendant”);
- 12      • Grace Holmes, Inc. dba J. Crew Store #0030 (hereinafter the “J. Crew  
13      Defendant”);
- 14      • Barneys, Inc. which will do business in California as Barneys New York  
15      dba Barneys New York Outlet #415 (hereinafter the “Barneys New York  
16      Defendant”);
- 17      • The Gap, Inc. dba Gap Outlet #1042 (hereinafter the “Gap Defendant”);
- 18      • Lucky Brand Dungarees Stores, Inc. dba Lucky Brand Jeans Outlet #3337  
19      (hereinafter the “Lucky Defendant”);
- 20      • Levi’s Only Stores, Inc. dba Dockers Outlet Store #520 (hereinafter the  
21      “Dockers Defendant”);
- 22      • PVH Retail Stores, Inc. dba Calvin Klein Store #048 (hereinafter the  
23      “Calvin Klein Defendant”);
- 24      • Retail Brand Alliance, Inc. dba Brooks Brothers #6704 (hereinafter the  
25      “Brooks Brothers Defendant”);
- 26      • Zumiez, Inc. dba Zumiez #139 (hereinafter the “Zumiez Defendant”);
- 27      • Nautica Retail USA, Inc. dba Nautica Napa #0030 (hereinafter the  
28      “Nautica Defendant”);

- Levi's Only Stores, Inc. dba Levi's Outlet Store #312 (hereinafter the "Levi's Defendant").

## II. JURISDICTION

3. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1343 for ADA claims.

4. Supplemental jurisdiction for claims brought under parallel California law—arising from the same nucleus of operative facts—is predicated on 28 U.S.C. § 1367.

5. Martinez's claims are authorized by 28 U.S.C. §§ 2201 and 2202.

## III. VENUE

6. All actions complained of herein take place within the jurisdiction of the United States District Court, Northern District of California, and venue is invoked pursuant to 28 U.S.C. § 1391(b), (c).

## IV. PARTIES

7. The Napa Premium Outlets Common Area Defendant owns, operates, manages, and/or leases the Napa Premium Outlets Common Area Facility, and consists of a person (or persons), firm, and/or corporation.

8. The Kenneth Cole Defendant owns, operates, manages, and/or leases the Kenneth Cole Facility, and consists of a person (or persons), firm, and/or corporation.

9. The Tommy Hilfiger Defendant owns, operates, manages, and/or leases the Tommy Hilfiger Facility, and consists of a person (or persons), firm, and/or corporation.

10. The Banana Republic Defendant owns, operates, manages, and/or leases the Banana Republic Facility, and consists of a person (or persons), firm, and/or corporation.

11. The J. Crew Defendant owns, operates, manages, and/or leases the J. Crew Facility, and consists of a person (or persons), firm, and/or corporation.



1           12. The Barneys New York Defendant owns, operates, manages, and/or  
2 leases the Barneys New York Facility, and consists of a person (or persons),  
3 firm, and/or corporation.

4           13. The Gap Defendant owns, operates, manages, and/or leases the Gap  
5 Facility, and consists of a person (or persons), firm, and/or corporation.

6           14. The Lucky Defendant owns, operates, manages, and/or leases the  
7 Lucky Facility, and consists of a person (or persons), firm, and/or corporation.

8           15. The Dockers Defendant owns, operates, manages, and/or leases the  
9 Dockers Facility, and consists of a person (or persons), firm, and/or corporation.

10           16. The Calvin Klein Defendant owns, operates, manages, and/or leases  
11 the Calvin Klein Facility, and consists of a person (or persons), firm, and/or  
12 corporation.

13           17. The Brooks Brothers Defendant owns, operates, manages, and/or  
14 leases the Brooks Brothers Facility, and consists of a person (or persons), firm,  
15 and/or corporation.

16           18. The Zumiez Defendant owns, operates, manages, and/or leases the  
17 Zumiez Facility, and consists of a person (or persons), firm, and/or corporation.

18           19. The Nautica Defendant owns, operates, manages, and/or leases the  
19 Nautica Facility, and consists of a person (or persons), firm, and/or corporation.

20           20. The Levi's Defendant owns, operates, manages, and/or leases the  
21 Levi's Facility, and consists of a person (or persons), firm, and/or corporation.

22           21. Martinez is a paraplegic as result of being shot in the back in 1987.  
23 He requires the use of a wheelchair and mobility equipped vehicle when  
24 traveling about in public. Consequently, Martinez is "physically disabled," as  
25 defined by all applicable California and United States laws, and a member of the  
26 public whose rights are protected by these laws.

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V. FACTS

22. The Napa Premium Outlets Common Area Facility is a sales or retail establishment, open to the public, which is intended for nonresidential use and whose operation affects commerce.

23. The Kenneth Cole Facility is a sales or retail establishment, open to the public, which is intended for nonresidential use and whose operation affects commerce.

24. The Tommy Hilfiger Facility is a sales or retail establishment, open to the public, which is intended for nonresidential use and whose operation affects commerce.

25. The Banana Republic Facility is a sales or retail establishment, open to the public, which is intended for nonresidential use and whose operation affects commerce.

26. The J. Crew Facility is a sales or retail establishment, open to the public, which is intended for nonresidential use and whose operation affects commerce.

27. The Barneys New York Facility is a sales or retail establishment, open to the public, which is intended for nonresidential use and whose operation affects commerce.

28. The Gap Facility is a sales or retail establishment, open to the public, which is intended for nonresidential use and whose operation affects commerce.

29. The Lucky Facility is a sales or retail establishment, open to the public, which is intended for nonresidential use and whose operation affects commerce.

30. The Dockers Facility is a sales or retail establishment, open to the public, which is intended for nonresidential use and whose operation affects commerce.



1           31. The Calvin Klein Facility is a sales or retail establishment, open to  
2 the public, which is intended for nonresidential use and whose operation affects  
3 commerce.

4           32. The Brooks Brothers Facility is a sales or retail establishment, open  
5 to the public, which is intended for nonresidential use and whose operation  
6 affects commerce.

7           33. The Zumiez Facility is a sales or retail establishment, open to the  
8 public, which is intended for nonresidential use and whose operation affects  
9 commerce.

10          34. The Nautica Facility is a sales or retail establishment, open to the  
11 public, which is intended for nonresidential use and whose operation affects  
12 commerce.

13          35. The Levi's Facility is a sales or retail establishment, open to the  
14 public, which is intended for nonresidential use and whose operation affects  
15 commerce.

16          36. Martinez visited the Facilities and encountered barriers (both  
17 physical and intangible) that interfered with—if not outright denied—his ability  
18 to use and enjoy the goods, services, privileges, and accommodations offered at  
19 all of the facilities.

20          37. To the extent known by Martinez, the barriers at the Napa Premium  
21 Outlets Common Area Facility included, but are not limited to, the following:

22           *Parking:*

- 23           • The slopes and/or cross slopes of the disabled parking spaces  
24           throughout the shopping center exceed 2.0%;
- 25           • The slopes and/or cross slopes of the access aisles throughout the  
26           shopping center exceed 2.0% (many due to encroaching built-up  
27           curb ramps);

- 1           • The slopes and/or cross slopes of the cut-out curb ramps throughout
- 2           the shopping center exceed 2.0%;
- 3           • The signage at the disabled parking spaces throughout the shopping
- 4           center is incorrect;
- 5           • The signage at the van accessible parking spaces throughout the
- 6           shopping center is incorrect;
- 7           • There are no marked crossings where the accessible route from the
- 8           disabled parking spaces to the Facilities' entrances crosses into the
- 9           vehicular way;
- 10          • There are multiple ramps throughout the shopping center that are too
- 11          steep;
- 12          • There are many disabled parking spaces throughout the shopping
- 13          center with excessive slopes and/or cross slopes due to encroaching
- 14          ramps;

15           *Common Restroom:* There are numerous barriers to access, including, but  
16 not limited to:

- 17          • The toilet tissue dispenser is an obstruction to the use of the side
- 18          grab bar;
- 19          • The toilet tissue dispenser contains sharp edges;
- 20          • The front roll of toilet tissue is more than 12 inches from the front
- 21          of the water closet;
- 22          • The pipes beneath the lavatories are improperly and incompletely
- 23          wrapped;
- 24          • The baby changing station is too high; and,
- 25          • There is insufficient strike side clearance when exiting the restroom;

26           *Common Seating:*

- 27          • None of the seating is designated as being accessible to the
- 28          disabled; and,

- None of the seating is accessible to the disabled.

These barriers prevented Martinez from enjoying full and equal access at the Napa Premium Outlets Common Area Facility.

38. Martinez was also deterred from visiting the Napa Premium Outlets Common Area Facility because he knew that the Napa Premium Outlets Common Area Facility's goods, services, facilities, privileges, advantages, and accommodations were unavailable to physically disabled patrons (such as himself). He continues to be deterred from visiting the Napa Premium Outlets Common Area Facility because of the future threats of injury created by these barriers.

39. To the extent known by Martinez, the barriers at the Kenneth Cole Facility included, but are not limited to, the following:

- There is no International Symbol of Accessibility ("ISA") mounted at the entrance;
- The entrance door has inaccessible "panel" handles;
- Many of the aisles through the store are blocked by merchandise and are thus too narrow;
- The dressing room door lock requires twisting, pinching and/or grasping to operate;
- The dressing room bench is not secured to the wall;
- The dressing room bench is not 24 inches wide by 48 inches long;
- The pay point machine is too high and/or at too steep of an angle;
- Due to merchandise displayed, there is insufficient clear floor space at the check out counter; and/or
- The check out counter is too high with no portion lowered to accommodate a patron in a wheelchair; and/or
- The check out counter is cluttered with merchandise and thus lacks the required depth.

1        These barriers prevented Martinez from enjoying full and equal access at  
2 the Kenneth Cole Facility.

3        40.     Martinez was also deterred from visiting the Kenneth Cole Facility  
4 because he knew that the Kenneth Cole Facility's goods, services, facilities,  
5 privileges, advantages, and accommodations were unavailable to physically  
6 disabled patrons (such as himself). He continues to be deterred from visiting the  
7 Kenneth Cole Facility because of the future threats of injury created by these  
8 barriers.

9        41.     To the extent known by Martinez, the barriers at the Tommy  
10 Hilfiger Facility included, but are not limited to, the following:

- 11            • There is no ISA mounted at the entrance;
- 12            • The entrance door has inaccessible "panel" handles;
- 13            • Many of the aisles through the store are blocked by merchandise  
14            and are thus too narrow;
- 15            • The dressing room bench is not 24 inches wide by 48 inches long;
- 16            • The pay point machine is too high and/or at too steep of an angle;
- 17            • Due to merchandise displayed, there is insufficient clear floor space  
18            at the check out counter; and/or
- 19            • The check out counter is too high with no portion lowered to  
20            accommodate a patron in a wheelchair; and/or
- 21            • The check out counter is cluttered with merchandise and thus lacks  
22            the required depth.

23        These barriers prevented Martinez from enjoying full and equal access at  
24 the Tommy Hilfiger Facility.

25        42.     Martinez was also deterred from visiting the Tommy Hilfiger  
26 Facility because he knew that the Tommy Hilfiger Facility's goods, services,  
27 facilities, privileges, advantages, and accommodations were unavailable to  
28 physically disabled patrons (such as himself). He continues to be deterred from

1 visiting the Tommy Hilfiger Facility because of the future threats of injury  
2 created by these barriers.

3 43. To the extent known by Martinez, the barriers at the Banana  
4 Republic Facility included, but are not limited to, the following:

- 5 • There is no ISA mounted at the entrance;
- 6 • The entrance door has inaccessible “panel” handles;
- 7 • Many of the aisles through the store are blocked by merchandise  
8 and are thus too narrow;
- 9 • The dressing room bench is not 24 inches wide by 48 inches long;
- 10 • The pay point machine is too high and/or at too steep of an angle;
- 11 • Due to merchandise displayed, there is insufficient clear floor space  
12 at the check out counter; and/or
- 13 • The check out counter is too high with no portion lowered to  
14 accommodate a patron in a wheelchair; and/or
- 15 • The check out counter is cluttered with merchandise and thus lacks  
16 the required depth.

17 These barriers prevented Martinez from enjoying full and equal access at  
18 the Banana Republic Facility.

19 44. Martinez was also deterred from visiting the Banana Republic  
20 Facility because he knew that the Banana Republic Facility’s goods, services,  
21 facilities, privileges, advantages, and accommodations were unavailable to  
22 physically disabled patrons (such as himself). He continues to be deterred from  
23 visiting the Banana Republic Facility because of the future threats of injury  
24 created by these barriers.

25 45. To the extent known by Martinez, the barriers at the J. Crew Facility  
26 included, but are not limited to, the following:

- 27 • There is no ISA mounted at the entrance;
- 28 • The entrance door has inaccessible “panel” handles;



- 1 • Many of the aisles through the store are blocked by merchandise
- 2 and are thus too narrow;
- 3 • There is insufficient clear floor space within the dressing room;
- 4 • The dressing room bench is not 24 inches wide by 48 inches long;
- 5 • The clothes hooks in the dressing room are too high;
- 6 • The dressing room door lock requires twisting, pinching and/or
- 7 grasping to operate;
- 8 • The pay point machine is too high and/or at too steep of an angle;
- 9 • Due to merchandise displayed, there is insufficient clear floor space
- 10 at the check out counter; and/or
- 11 • The check out counter is too high with no portion lowered to
- 12 accommodate a patron in a wheelchair; and/or
- 13 • The check out counter is cluttered with merchandise and thus lacks
- 14 the required depth.

15 These barriers prevented Martinez from enjoying full and equal access at  
16 the J. Crew Facility.

17 46. Martinez was also deterred from visiting the J. Crew Facility  
18 because he knew that the J. Crew Facility's goods, services, facilities, privileges,  
19 advantages, and accommodations were unavailable to physically disabled  
20 patrons (such as himself). He continues to be deterred from visiting the J. Crew  
21 Facility because of the future threats of injury created by these barriers.

22 47. To the extent known by Martinez, the barriers at the Barneys New  
23 York Facility included, but are not limited to, the following:

- 24 • There is no ISA mounted at the entrance;
- 25 • The entrance door has inaccessible "panel" handles;
- 26 • Many of the aisles through the store are blocked by merchandise
- 27 and are thus too narrow;
- 28 • The dressing room bench is not 24 inches wide by 48 inches long;



- 1 • The pay point machine is too high and/or at too steep of an angle;
- 2 • Due to merchandise displayed, there is insufficient clear floor space
- 3 at the check out counter; and/or
- 4 • The check out counter is too high with no portion lowered to
- 5 accommodate a patron in a wheelchair; and/or
- 6 • The check out counter is cluttered with merchandise and thus lacks
- 7 the required depth.

8 These barriers prevented Martinez from enjoying full and equal access at  
9 the Barneys New York Facility.

10 48. Martinez was also deterred from visiting the Barneys New York  
11 Facility because he knew that the Barneys New York Facility's goods, services,  
12 facilities, privileges, advantages, and accommodations were unavailable to  
13 physically disabled patrons (such as himself). He continues to be deterred from  
14 visiting the Barneys New York Facility because of the future threats of injury  
15 created by these barriers.

16 49. To the extent known by Martinez, the barriers at the Gap Facility  
17 included, but are not limited to, the following:

- 18 • There is no ISA mounted at the entrance;
- 19 • The entrance door has inaccessible "panel" handles;
- 20 • Many of the aisles through the store are blocked by merchandise
- 21 and are thus too narrow;
- 22 • The dressing room bench is not 24 inches wide by 48 inches long;
- 23 • The pay point machine is too high and/or at too steep of an angle;
- 24 • Due to merchandise displayed, there is insufficient clear floor space
- 25 at the check out counter; and/or
- 26 • The check out counter is too high with no portion lowered to
- 27 accommodate a patron in a wheelchair; and/or
- 28

- The check out counter is cluttered with merchandise and thus lacks the required depth.

These barriers prevented Martinez from enjoying full and equal access at the Gap Facility.

50. Martinez was also deterred from visiting the Gap Facility because he knew that the Gap Facility's goods, services, facilities, privileges, advantages, and accommodations were unavailable to physically disabled patrons (such as himself). He continues to be deterred from visiting the Gap Facility because of the future threats of injury created by these barriers.

51. To the extent known by Martinez, the barriers at the Lucky Facility included, but are not limited to, the following:

- The ISA mounted at the entrance is too low;
- The entrance door has inaccessible "panel" handles;
- Many of the aisles through the store are blocked by merchandise and are thus too narrow;
- The clothing hooks in the dressing room are mounted too high;
- The dressing room bench is not 24 inches wide by 48 inches long;
- The dressing room mirror is not mounted so as to afford a view to a person seated on the bench;
- The pay point machine is too high and/or at too steep of an angle;
- Due to merchandise displayed, there is insufficient clear floor space at the check out counter; and/or
- The check out counter is too high with no portion lowered to accommodate a patron in a wheelchair; and/or
- The check out counter is cluttered with merchandise and thus lacks the required depth.

These barriers prevented Martinez from enjoying full and equal access at the Lucky Facility.

1           52. Martinez was also deterred from visiting the Lucky Facility because  
2 he knew that the Lucky Facility's goods, services, facilities, privileges,  
3 advantages, and accommodations were unavailable to physically disabled  
4 patrons (such as himself). He continues to be deterred from visiting the Lucky  
5 Facility because of the future threats of injury created by these barriers.

6           53. To the extent known by Martinez, the barriers at the Dockers  
7 Facility included, but are not limited to, the following:

- 8           • There is no ISA mounted at the entrance;
- 9           • The entrance door has inaccessible "panel" handles;
- 10          • Many of the aisles through the store are blocked by merchandise  
11           and are thus too narrow;
- 12          • The dressing room bench is not 24 inches wide by 48 inches long;
- 13          • The pay point machine is too high and/or at too steep of an angle;
- 14          • Due to merchandise displayed, there is insufficient clear floor space  
15           at the check out counter; and/or
- 16          • The check out counter is too high with no portion lowered to  
17           accommodate a patron in a wheelchair; and/or
- 18          • The check out counter is cluttered with merchandise and thus lacks  
19           the required depth.

20           These barriers prevented Martinez from enjoying full and equal access at  
21 the Dockers Facility.

22           54. Martinez was also deterred from visiting the Dockers Facility  
23 because he knew that the Dockers Facility's goods, services, facilities,  
24 privileges, advantages, and accommodations were unavailable to physically  
25 disabled patrons (such as himself). He continues to be deterred from visiting the  
26 Dockers Facility because of the future threats of injury created by these barriers.

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1           55. To the extent known by Martinez, the barriers at the Calvin Klein  
2 Facility included, but are not limited to, the following:

- 3           • The ISA mounted at the entrance is too low;
- 4           • The entrance door has inaccessible “panel” handles;
- 5           • Many of the aisles through the store are blocked by merchandise  
6 and are thus too narrow;
- 7           • The dressing room bench is not secured to the wall;
- 8           • The dressing room bench is not 24 inches wide by 48 inches long;
- 9           • The pay point machine is too high and/or at too steep of an angle;
- 10          • Due to merchandise displayed, there is insufficient clear floor space  
11 at the check out counter; and/or
- 12          • The check out counter is too high with no portion lowered to  
13 accommodate a patron in a wheelchair; and/or
- 14          • The check out counter is cluttered with merchandise and thus lacks  
15 the required depth.

16           These barriers prevented Martinez from enjoying full and equal access at  
17 the Calvin Klein Facility.

18           56. Martinez was also deterred from visiting the Calvin Klein Facility  
19 because he knew that the Calvin Klein Facility’s goods, services, facilities,  
20 privileges, advantages, and accommodations were unavailable to physically  
21 disabled patrons (such as himself). He continues to be deterred from visiting the  
22 Calvin Klein Facility because of the future threats of injury created by these  
23 barriers.

24           57. To the extent known by Martinez, the barriers at the Brooks  
25 Brothers Facility included, but are not limited to, the following:

- 26           • There is no ISA mounted at the entrance;
- 27           • The entrance door has inaccessible “panel” handles;

- 1 • Many of the aisles through the store are blocked by merchandise
- 2 and are thus too narrow;
- 3 • The dressing room bench is not 24 inches wide by 48 inches long;
- 4 • The pay point machine is too high and/or at too steep of an angle;
- 5 • Due to merchandise displayed, there is insufficient clear floor space
- 6 at the check out counter; and/or
- 7 • The check out counter is too high with no portion lowered to
- 8 accommodate a patron in a wheelchair; and/or
- 9 • The check out counter is cluttered with merchandise and thus lacks
- 10 the required depth.

11 These barriers prevented Martinez from enjoying full and equal access at  
12 the Brooks Brothers Facility.

13 58. Martinez was also deterred from visiting the Brooks Brothers  
14 Facility because he knew that the Brooks Brothers Facility's goods, services,  
15 facilities, privileges, advantages, and accommodations were unavailable to  
16 physically disabled patrons (such as himself). He continues to be deterred from  
17 visiting the Brooks Brothers Facility because of the future threats of injury  
18 created by these barriers.

19 59. To the extent known by Martinez, the barriers at the Zumiez Facility  
20 included, but are not limited to, the following:

- 21 • There is no ISA mounted at the entrance;
- 22 • The entrance door has inaccessible "panel" handles;
- 23 • Many of the aisles through the store are blocked by merchandise
- 24 and are thus too narrow;
- 25 • The dressing room bench is not 24 inches wide by 48 inches long;
- 26 • The pay point machine is too high and/or at too steep of an angle;
- 27 • Due to merchandise displayed, there is insufficient clear floor space
- 28 at the check out counter; and/or



- The check out counter is too high with no portion lowered to accommodate a patron in a wheelchair; and/or
- The check out counter is cluttered with merchandise and thus lacks the required depth.

These barriers prevented Martinez from enjoying full and equal access at the Zumiez Facility.

60. Martinez was also deterred from visiting the Zumiez Facility because he knew that the Zumiez Facility's goods, services, facilities, privileges, advantages, and accommodations were unavailable to physically disabled patrons (such as himself). He continues to be deterred from visiting the Zumiez Facility because of the future threats of injury created by these barriers.

61. To the extent known by Martinez, the barriers at the Nautica Facility included, but are not limited to, the following:

- There is no ISA mounted at the entrance;
- The entrance door has inaccessible "panel" handles;
- Many of the aisles through the store are blocked by merchandise and are thus too narrow;
- The dressing room bench is not 24 inches wide by 48 inches long;
- The grab bar in the dressing room is mounted too high;
- The clothes hook in the dressing room is mounted too high;
- The pay point machine is too high and/or at too steep of an angle;
- Due to merchandise displayed, there is insufficient clear floor space at the check out counter; and/or
- The check out counter is too high with no portion lowered to accommodate a patron in a wheelchair; and/or
- The check out counter is cluttered with merchandise and thus lacks the required depth.



1        These barriers prevented Martinez from enjoying full and equal access at  
2 the Nautica Facility.

3        62.     Martinez was also deterred from visiting the Nautica Facility  
4 because he knew that the Nautica Facility's goods, services, facilities, privileges,  
5 advantages, and accommodations were unavailable to physically disabled  
6 patrons (such as himself). He continues to be deterred from visiting the Nautica  
7 Facility because of the future threats of injury created by these barriers.

8        63.     To the extent known by Martinez, the barriers at the Levi's Facility  
9 included, but are not limited to, the following:

- 10            • There is no ISA mounted at the entrance;
- 11            • The entrance door has inaccessible "panel" handles;
- 12            • Many of the aisles through the store are blocked by merchandise  
13            and are thus too narrow;
- 14            • The dressing room bench is not 24 inches wide by 48 inches long;
- 15            • The dressing room mirror is not mounted so as to afford a view to a  
16            person seated on the bench;
- 17            • The pay point machine is too high and/or at too steep of an angle;
- 18            • Due to merchandise displayed, there is insufficient clear floor space  
19            at the check out counter; and/or
- 20            • The check out counter is too high with no portion lowered to  
21            accommodate a patron in a wheelchair; and/or
- 22            • The check out counter is cluttered with merchandise and thus lacks  
23            the required depth.

24        These barriers prevented Martinez from enjoying full and equal access at  
25 the Levi's Facility.

26        64.     Martinez was also deterred from visiting the Levi's Facility because  
27 he knew that the Levi's Facility's goods, services, facilities, privileges,  
28 advantages, and accommodations were unavailable to physically disabled

1 patrons (such as himself). He continues to be deterred from visiting the Levi's  
2 Facility because of the future threats of injury created by these barriers.

3 65. Martinez also encountered barriers at the Facilities which violate  
4 state and federal law, but were unrelated to his disability. Nothing within this  
5 Complaint, however, should be construed as an allegation that Martinez is  
6 seeking to remove barriers unrelated to his disability.

7 66. The Napa Premium Outlets Common Area Defendant knew that  
8 these elements and areas of the Napa Premium Outlets Common Area Facility  
9 were inaccessible, violate state and federal law, and interfere with (or deny)  
10 access to the physically disabled. Moreover, the Napa Premium Outlets  
11 Common Area Defendant has the financial resources to remove these barriers  
12 from the Napa Premium Outlets Common Area Facility (without much difficulty  
13 or expense), and make the Napa Premium Outlets Common Area Facility  
14 accessible to the physically disabled. To date, however, the Napa Premium  
15 Outlets Common Area Defendant refuses to either remove those barriers or seek  
16 an unreasonable hardship exemption to excuse non-compliance.

17 67. At all relevant times, the Napa Premium Outlets Common Area  
18 Defendant has possessed and enjoyed sufficient control and authority to modify  
19 the Napa Premium Outlets Common Area Facility to remove impediments to  
20 wheelchair access and to comply with the Americans with Disabilities Act  
21 Accessibility Guidelines and Title 24 regulations. The Napa Premium Outlets  
22 Common Area Defendant has not removed such impediments and has not  
23 modified the Napa Premium Outlets Common Area Facility to conform to  
24 accessibility standards. The Napa Premium Outlets Common Area Defendant  
25 has intentionally maintained the Napa Premium Outlets Common Area Facility  
26 in its current condition and has intentionally refrained from altering Napa  
27 Premium Outlets Common Area Facility so that it complies with the accessibility  
28 standards.

1           68.     Martinez further alleges that the (continued) presence of barriers at  
2 the Napa Premium Outlets Common Area Facility is so obvious as to establish  
3 the Napa Premium Outlets Common Area Defendant's discriminatory intent. On  
4 information and belief, Martinez avers that evidence of the discriminatory intent  
5 includes the Napa Premium Outlets Common Area Defendant's refusal to adhere  
6 to relevant building standards; disregard for the building plans and permits  
7 issued for the Napa Premium Outlets Common Area Facility; conscientious  
8 decision to the architectural layout (as it currently exists) at the Napa Premium  
9 Outlets Common Area Facility; decision not to remove barriers from the Napa  
10 Premium Outlets Common Area Facility; and allowance that the Napa Premium  
11 Outlets Common Area Facility continues to exist in its non-compliant state.  
12 Martinez further alleges, on information and belief, that the Napa Premium  
13 Outlets Common Area Defendant is not in the midst of a remodel, and that the  
14 barriers present at the Napa Premium Outlets Common Area Facility are not  
15 isolated (or temporary) interruptions in access due to maintenance or repairs.<sup>1</sup>

16           69.     The Kenneth Cole Defendant knew that these elements and areas of  
17 the Kenneth Cole Facility were inaccessible, violate state and federal law, and  
18 interfere with (or deny) access to the physically disabled. Moreover, the  
19 Kenneth Cole Defendant has the financial resources to remove these barriers  
20 from the Kenneth Cole Facility (without much difficulty or expense), and make  
21 the Kenneth Cole Facility accessible to the physically disabled. To date,  
22 however, the Kenneth Cole Defendant refuses to either remove those barriers or  
23 seek an unreasonable hardship exemption to excuse non-compliance.

24           70.     At all relevant times, the Kenneth Cole Defendant has possessed  
25 and enjoyed sufficient control and authority to modify the Kenneth Cole Facility  
26 to remove impediments to wheelchair access and to comply with the Americans  
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28           <sup>1</sup> Id.; 28 C.F.R. § 36.211(b)  
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1 with Disabilities Act Accessibility Guidelines and Title 24 regulations. The  
2 Kenneth Cole Defendant has not removed such impediments and has not  
3 modified the Kenneth Cole Facility to conform to accessibility standards. The  
4 Kenneth Cole Defendant has intentionally maintained the Kenneth Cole Facility  
5 in its current condition and has intentionally refrained from altering the Kenneth  
6 Cole Facility so that it complies with the accessibility standards.

7 71. Martinez further alleges that the (continued) presence of barriers at  
8 the Kenneth Cole Facility is so obvious as to establish the Kenneth Cole  
9 Defendant' discriminatory intent. On information and belief, Martinez avers that  
10 evidence of the discriminatory intent includes the Kenneth Cole Defendant's  
11 refusal to adhere to relevant building standards; disregard for the building plans  
12 and permits issued for the Kenneth Cole Facility; conscientious decision to the  
13 architectural layout (as it currently exists) at the Kenneth Cole Facility; decision  
14 not to remove barriers from the Kenneth Cole Facility; and allowance that the  
15 Kenneth Cole Facility continues to exist in its non-compliant state. Martinez  
16 further alleges, on information and belief, that the Kenneth Cole Defendant is not  
17 in the midst of a remodel, and that the barriers present at the Kenneth Cole  
18 Facility are not isolated (or temporary) interruptions in access due to  
19 maintenance or repairs.<sup>2</sup>

20 72. The Tommy Hilfiger Defendant knew that these elements and areas  
21 of the Tommy Hilfiger Facility were inaccessible, violate state and federal law,  
22 and interfere with (or deny) access to the physically disabled. Moreover, the  
23 Tommy Hilfiger Defendant has the financial resources to remove these barriers  
24 from the Tommy Hilfiger Facility (without much difficulty or expense), and  
25 make the Tommy Hilfiger Facility accessible to the physically disabled. To date,  
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<sup>2</sup> Id.; 28 C.F.R. § 36.211(b)  
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1 however, the Tommy Hilfiger Defendant refuses to either remove those barriers  
2 or seek an unreasonable hardship exemption to excuse non-compliance.

3 73. At all relevant times, the Tommy Hilfiger Defendant has possessed  
4 and enjoyed sufficient control and authority to modify the Tommy Hilfiger  
5 Facility to remove impediments to wheelchair access and to comply with the  
6 Americans with Disabilities Act Accessibility Guidelines and Title 24  
7 regulations. The Tommy Hilfiger Defendant has not removed such impediments  
8 and has not modified the Tommy Hilfiger Facility to conform to accessibility  
9 standards. The Tommy Hilfiger Defendant has intentionally maintained the  
10 Tommy Hilfiger Facility in its current condition and has intentionally refrained  
11 from altering Tommy Hilfiger Facility so that it complies with the accessibility  
12 standards.

13 74. Martinez further alleges that the (continued) presence of barriers at  
14 the Tommy Hilfiger Facility is so obvious as to establish the Tommy Hilfiger  
15 Defendant's discriminatory intent. On information and belief, Martinez avers  
16 that evidence of the discriminatory intent includes the Tommy Hilfiger  
17 Defendant's refusal to adhere to relevant building standards; disregard for the  
18 building plans and permits issued for the Tommy Hilfiger Facility; conscientious  
19 decision to the architectural layout (as it currently exists) at the Tommy Hilfiger  
20 Facility; decision not to remove barriers from the Tommy Hilfiger Facility; and  
21 allowance that the Tommy Hilfiger Facility continues to exist in its non-  
22 compliant state. Martinez further alleges, on information and belief, that the  
23 Tommy Hilfiger Defendant is not in the midst of a remodel, and that the barriers  
24 present at the Tommy Hilfiger Facility are not isolated (or temporary)  
25 interruptions in access due to maintenance or repairs.<sup>3</sup>

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28 <sup>3</sup> Id.; 28 C.F.R. § 36.211(b)  
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1           75. The Banana Republic Defendant knew that these elements and areas  
2 of the Banana Republic Facility were inaccessible, violate state and federal law,  
3 and interfere with (or deny) access to the physically disabled. Moreover, the  
4 Banana Republic Defendant has the financial resources to remove these barriers  
5 from the Banana Republic Facility (without much difficulty or expense), and  
6 make the Banana Republic Facility accessible to the physically disabled. To  
7 date, however, the Banana Republic Defendant refuses to either remove those  
8 barriers or seek an unreasonable hardship exemption to excuse non-compliance.

9           76. At all relevant times, the Banana Republic Defendant has possessed  
10 and enjoyed sufficient control and authority to modify the Banana Republic  
11 Facility to remove impediments to wheelchair access and to comply with the  
12 Americans with Disabilities Act Accessibility Guidelines and Title 24  
13 regulations. The Banana Republic Defendant has not removed such  
14 impediments and has not modified the Banana Republic Facility to conform to  
15 accessibility standards. The Banana Republic Defendant has intentionally  
16 maintained the Banana Republic Facility in its current condition and has  
17 intentionally refrained from altering the Banana Republic Facility so that it  
18 complies with the accessibility standards.

19           77. Martinez further alleges that the (continued) presence of barriers at  
20 the Banana Republic Facility is so obvious as to establish the Banana Republic  
21 Defendant's discriminatory intent. On information and belief, Martinez avers  
22 that evidence of the discriminatory intent includes the Banana Republic  
23 Defendant's refusal to adhere to relevant building standards; disregard for the  
24 building plans and permits issued for the Banana Republic Facility;  
25 conscientious decision to the architectural layout (as it currently exists) at the  
26 Banana Republic Facility; decision not to remove barriers from the Banana  
27 Republic Facility; and allowance that the Banana Republic Facility continues to  
28 exist in its non-compliant state. Martinez further alleges, on information and



1 belief, that the Banana Republic Defendant is not in the midst of a remodel, and  
2 that the barriers present at the Banana Republic Facility are not isolated (or  
3 temporary) interruptions in access due to maintenance or repairs.<sup>4</sup>

4 78. The J. Crew Defendant knew that these elements and areas of the J.  
5 Crew Facility were inaccessible, violate state and federal law, and interfere with  
6 (or deny) access to the physically disabled. Moreover, the J. Crew Defendant  
7 has the financial resources to remove these barriers from the J. Crew Facility  
8 (without much difficulty or expense), and make the J. Crew Facility accessible to  
9 the physically disabled. To date, however, the J. Crew Defendant refuses to  
10 either remove those barriers or seek an unreasonable hardship exemption to  
11 excuse non-compliance.

12 79. At all relevant times, the J. Crew Defendant has possessed and  
13 enjoyed sufficient control and authority to modify the J. Crew Facility to remove  
14 impediments to wheelchair access and to comply with the Americans with  
15 Disabilities Act Accessibility Guidelines and Title 24 regulations. The J. Crew  
16 Defendant has not removed such impediments and has not modified the J. Crew  
17 Facility to conform to accessibility standards. The J. Crew Defendant has  
18 intentionally maintained the J. Crew Facility in its current condition and has  
19 intentionally refrained from altering the J. Crew Facility so that it complies with  
20 the accessibility standards.

21 80. Martinez further alleges that the (continued) presence of barriers at  
22 the J. Crew Facility is so obvious as to establish the J. Crew Defendant's  
23 discriminatory intent. On information and belief, Martinez avers that evidence of  
24 the discriminatory intent includes the J. Crew Defendant's refusal to adhere to  
25 relevant building standards; disregard for the building plans and permits issued  
26 for the J. Crew Facility; conscientious decision to the architectural layout (as it  
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<sup>4</sup> Id.; 28 C.F.R. § 36.211(b)  
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1 currently exists) at the J. Crew Facility; decision not to remove barriers from the  
2 J. Crew Facility; and allowance that the J. Crew Facility continues to exist in its  
3 non-compliant state. Martinez further alleges, on information and belief, that the  
4 J. Crew Defendant is not in the midst of a remodel, and that the barriers present  
5 at the J. Crew Facility are not isolated (or temporary) interruptions in access due  
6 to maintenance or repairs.<sup>5</sup>

7       81. The Barneys New York Defendant knew that these elements and  
8 areas of the Barneys New York Facility were inaccessible, violate state and  
9 federal law, and interfere with (or deny) access to the physically disabled.  
10 Moreover, the Barneys New York Defendant has the financial resources to  
11 remove these barriers from the Barneys New York Facility (without much  
12 difficulty or expense), and make the Barneys New York Facility accessible to the  
13 physically disabled. To date, however, the Barneys New York Defendant refuses  
14 to either remove those barriers or seek an unreasonable hardship exemption to  
15 excuse non-compliance.

16       82. At all relevant times, the Barneys New York Defendant has  
17 possessed and enjoyed sufficient control and authority to modify the Barneys  
18 New York Facility to remove impediments to wheelchair access and to comply  
19 with the Americans with Disabilities Act Accessibility Guidelines and Title 24  
20 regulations. The Barneys New York Defendant has not removed such  
21 impediments and has not modified the Barneys New York Facility to conform to  
22 accessibility standards. The Barneys New York Defendant has intentionally  
23 maintained the Barneys New York Facility in its current condition and has  
24 intentionally refrained from altering the Barneys New York Facility so that it  
25 complies with the accessibility standards.

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<sup>5</sup> Id.; 28 C.F.R. § 36.211(b)  
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1           83. Martinez further alleges that the (continued) presence of barriers at  
2 the Barneys New York Facility is so obvious as to establish the Barneys New  
3 York Defendant's discriminatory intent. On information and belief, Martinez  
4 avers that evidence of the discriminatory intent includes the Barneys New York  
5 Defendant's refusal to adhere to relevant building standards; disregard for the  
6 building plans and permits issued for the Barneys New York Facility;  
7 conscientious decision to the architectural layout (as it currently exists) at the  
8 Barneys New York Facility; decision not to remove barriers from the Barneys  
9 New York Facility; and allowance that the Barneys New York Facility continues  
10 to exist in its non-compliant state. Martinez further alleges, on information and  
11 belief, that the Barneys New York Defendant is not in the midst of a remodel,  
12 and that the barriers present at the Barneys New York Facility are not isolated (or  
13 temporary) interruptions in access due to maintenance or repairs.<sup>6</sup>

14           84. The Gap Defendant knew that these elements and areas of the Gap  
15 Facility were inaccessible, violate state and federal law, and interfere with (or  
16 deny) access to the physically disabled. Moreover, the Gap Defendant has the  
17 financial resources to remove these barriers from the Gap Facility (without much  
18 difficulty or expense), and make the Gap Facility accessible to the physically  
19 disabled. To date, however, the Gap Defendant refuses to either remove those  
20 barriers or seek an unreasonable hardship exemption to excuse non-compliance.

21           85. At all relevant times, the Gap Defendant has possessed and enjoyed  
22 sufficient control and authority to modify the Gap Facility to remove  
23 impediments to wheelchair access and to comply with the Americans with  
24 Disabilities Act Accessibility Guidelines and Title 24 regulations. The Gap  
25 Defendant has not removed such impediments and has not modified the Gap  
26 Facility to conform to accessibility standards. The Gap Defendant has  
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28 <sup>6</sup> Id.; 28 C.F.R. § 36.211(b)  
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1 intentionally maintained the Gap Facility in its current condition and has  
2 intentionally refrained from altering the Gap Facility so that it complies with the  
3 accessibility standards.

4 86. Martinez further alleges that the (continued) presence of barriers at  
5 the Gap Facility is so obvious as to establish the Gap Defendant's discriminatory  
6 intent. On information and belief, Martinez avers that evidence of the  
7 discriminatory intent includes the Gap Defendant's refusal to adhere to relevant  
8 building standards; disregard for the building plans and permits issued for the  
9 Gap Facility; conscientious decision to the architectural layout (as it currently  
10 exists) at the Gap Facility; decision not to remove barriers from the Gap Facility;  
11 and allowance that the Gap Facility continues to exist in its non-compliant state.  
12 Martinez further alleges, on information and belief, that the Gap Defendant is not  
13 in the midst of a remodel, and that the barriers present at the Gap Facility are not  
14 isolated (or temporary) interruptions in access due to maintenance or repairs.<sup>7</sup>

15 87. The Lucky Defendant knew that these elements and areas of the  
16 Lucky Facility were inaccessible, violate state and federal law, and interfere with  
17 (or deny) access to the physically disabled. Moreover, the Lucky Defendant has  
18 the financial resources to remove these barriers from the Lucky Facility (without  
19 much difficulty or expense), and make the Lucky Facility accessible to the  
20 physically disabled. To date, however, the Lucky Defendant refuses to either  
21 remove those barriers or seek an unreasonable hardship exemption to excuse  
22 non-compliance.

23 88. At all relevant times, the Lucky Defendant has possessed and  
24 enjoyed sufficient control and authority to modify the Lucky Facility to remove  
25 impediments to wheelchair access and to comply with the Americans with  
26 Disabilities Act Accessibility Guidelines and Title 24 regulations. The Lucky  
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28 <sup>7</sup> Id.; 28 C.F.R. § 36.211(b)  
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1 Defendant has not removed such impediments and has not modified the Lucky  
2 Facility to conform to accessibility standards. The Lucky Defendant has  
3 intentionally maintained the Lucky Facility in its current condition and has  
4 intentionally refrained from altering the Lucky Facility so that it complies with  
5 the accessibility standards.

6 89. Martinez further alleges that the (continued) presence of barriers at  
7 the Lucky Facility is so obvious as to establish the Lucky Defendant's  
8 discriminatory intent. On information and belief, Martinez avers that evidence of  
9 the discriminatory intent includes the Lucky Defendant's refusal to adhere to  
10 relevant building standards; disregard for the building plans and permits issued  
11 for the Lucky Facility; conscientious decision to the architectural layout (as it  
12 currently exists) at the Lucky Facility; decision not to remove barriers from the  
13 Lucky Facility; and allowance that the Lucky Facility continues to exist in its  
14 non-compliant state. Martinez further alleges, on information and belief, that the  
15 Lucky Defendant is not in the midst of a remodel, and that the barriers present at  
16 the Lucky Facility are not isolated (or temporary) interruptions in access due to  
17 maintenance or repairs.<sup>8</sup>

18 90. The Dockers Defendant knew that these elements and areas of the  
19 Dockers Facility were inaccessible, violate state and federal law, and interfere  
20 with (or deny) access to the physically disabled. Moreover, the Dockers  
21 Defendant has the financial resources to remove these barriers from the Dockers  
22 Facility (without much difficulty or expense), and make the Dockers Facility  
23 accessible to the physically disabled. To date, however, the Dockers Defendant  
24 refuses to either remove those barriers or seek an unreasonable hardship  
25 exemption to excuse non-compliance.

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<sup>8</sup> Id.; 28 C.F.R. § 36.211(b)  
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1           91. At all relevant times, the Dockers Defendant has possessed and  
2 enjoyed sufficient control and authority to modify the Dockers Facility to remove  
3 impediments to wheelchair access and to comply with the Americans with  
4 Disabilities Act Accessibility Guidelines and Title 24 regulations. The Dockers  
5 Defendant has not removed such impediments and has not modified the Dockers  
6 Facility to conform to accessibility standards. The Dockers Defendant has  
7 intentionally maintained the Dockers Facility in its current condition and has  
8 intentionally refrained from altering the Dockers Facility so that it complies with  
9 the accessibility standards.

10           92. Martinez further alleges that the (continued) presence of barriers at  
11 the Dockers Facility is so obvious as to establish the Dockers Defendant's  
12 discriminatory intent. On information and belief, Martinez avers that evidence of  
13 the discriminatory intent includes the Dockers Defendant's refusal to adhere to  
14 relevant building standards; disregard for the building plans and permits issued  
15 for the Dockers Facility; conscientious decision to the architectural layout (as it  
16 currently exists) at the Dockers Facility; decision not to remove barriers from the  
17 Dockers Facility; and allowance that the Dockers Facility continues to exist in its  
18 non-compliant state. Martinez further alleges, on information and belief, that the  
19 Dockers Defendant is not in the midst of a remodel, and that the barriers present  
20 at the Dockers Facility are not isolated (or temporary) interruptions in access due  
21 to maintenance or repairs.<sup>9</sup>

22           93. The Calvin Klein Defendant knew that these elements and areas of  
23 the Calvin Klein Facility were inaccessible, violate state and federal law, and  
24 interfere with (or deny) access to the physically disabled. Moreover, the Calvin  
25 Klein Defendant has the financial resources to remove these barriers from the  
26 Calvin Klein Facility (without much difficulty or expense), and make the Calvin  
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<sup>9</sup> Id.; 28 C.F.R. § 36.211(b)  
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1 Klein Facility accessible to the physically disabled. To date, however, the  
2 Calvin Klein Defendant refuses to either remove those barriers or seek an  
3 unreasonable hardship exemption to excuse non-compliance.

4 94. At all relevant times, the Calvin Klein Defendant has possessed and  
5 enjoyed sufficient control and authority to modify the Calvin Klein Facility to  
6 remove impediments to wheelchair access and to comply with the Americans  
7 with Disabilities Act Accessibility Guidelines and Title 24 regulations. The  
8 Calvin Klein Defendant has not removed such impediments and has not modified  
9 the Calvin Klein Facility to conform to accessibility standards. The Calvin Klein  
10 Defendant has intentionally maintained the Calvin Klein Facility in its current  
11 condition and has intentionally refrained from altering the Calvin Klein Facility  
12 so that it complies with the accessibility standards.

13 95. Martinez further alleges that the (continued) presence of barriers at  
14 the Calvin Klein Facility is so obvious as to establish the Calvin Klein  
15 Defendant's discriminatory intent. On information and belief, Martinez avers  
16 that evidence of the discriminatory intent includes the Calvin Klein Defendant's  
17 refusal to adhere to relevant building standards; disregard for the building plans  
18 and permits issued for the Calvin Klein Facility; conscientious decision to the  
19 architectural layout (as it currently exists) at the Calvin Klein Facility; decision  
20 not to remove barriers from the Calvin Klein Facility; and allowance that the  
21 Calvin Klein Facility continues to exist in its non-compliant state. Martinez  
22 further alleges, on information and belief, that the Calvin Klein Defendant is not  
23 in the midst of a remodel, and that the barriers present at the Calvin Klein  
24 Facility are not isolated (or temporary) interruptions in access due to  
25 maintenance or repairs.<sup>10</sup>

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<sup>10</sup> Id.; 28 C.F.R. § 36.211(b)  
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1           96. The Brooks Brothers Defendant knew that these elements and areas  
2 of the Brooks Brothers Facility were inaccessible, violate state and federal law,  
3 and interfere with (or deny) access to the physically disabled. Moreover, the  
4 Brooks Brothers Defendant has the financial resources to remove these barriers  
5 from the Brooks Brothers Facility (without much difficulty or expense), and  
6 make the Brooks Brothers Facility accessible to the physically disabled. To date,  
7 however, the Brooks Brothers Defendant refuses to either remove those barriers  
8 or seek an unreasonable hardship exemption to excuse non-compliance.

9           97. At all relevant times, the Brooks Brothers Defendant has possessed  
10 and enjoyed sufficient control and authority to modify the Brooks Brothers  
11 Facility to remove impediments to wheelchair access and to comply with the  
12 Americans with Disabilities Act Accessibility Guidelines and Title 24  
13 regulations. The Brooks Brothers Defendant has not removed such impediments  
14 and has not modified the Brooks Brothers Facility to conform to accessibility  
15 standards. The Brooks Brothers Defendant has intentionally maintained the  
16 Brooks Brothers Facility in its current condition and has intentionally refrained  
17 from altering the Brooks Brothers Facility so that it complies with the  
18 accessibility standards.

19           98. Martinez further alleges that the (continued) presence of barriers at  
20 the Brooks Brothers Facility is so obvious as to establish the Brooks Brothers  
21 Defendant's discriminatory intent. On information and belief, Martinez avers  
22 that evidence of the discriminatory intent includes the Brooks Brothers  
23 Defendant's refusal to adhere to relevant building standards; disregard for the  
24 building plans and permits issued for the Brooks Brothers Facility; conscientious  
25 decision to the architectural layout (as it currently exists) at the Brooks Brothers  
26 Facility; decision not to remove barriers from the Brooks Brothers Facility; and  
27 allowance that the Brooks Brothers Facility continues to exist in its non-  
28 compliant state. Martinez further alleges, on information and belief, that the

1 Brooks Brothers Defendant is not in the midst of a remodel, and that the barriers  
2 present at the Brooks Brothers Facility are not isolated (or temporary)  
3 interruptions in access due to maintenance or repairs.<sup>11</sup>

4 99. The Zumiez Defendant knew that these elements and areas of the  
5 Zumiez Facility were inaccessible, violate state and federal law, and interfere  
6 with (or deny) access to the physically disabled. Moreover, the Zumiez  
7 Defendant has the financial resources to remove these barriers from the Zumiez  
8 Facility (without much difficulty or expense), and make the Zumiez Facility  
9 accessible to the physically disabled. To date, however, the Zumiez Defendant  
10 refuses to either remove those barriers or seek an unreasonable hardship  
11 exemption to excuse non-compliance.

12 100. At all relevant times, the Zumiez Defendant has possessed and  
13 enjoyed sufficient control and authority to modify the Zumiez Facility to remove  
14 impediments to wheelchair access and to comply with the Americans with  
15 Disabilities Act Accessibility Guidelines and Title 24 regulations. The Zumiez  
16 Defendant has not removed such impediments and has not modified the Zumiez  
17 Facility to conform to accessibility standards. The Zumiez Defendant has  
18 intentionally maintained the Zumiez Facility in its current condition and has  
19 intentionally refrained from altering the Zumiez Facility so that it complies with  
20 the accessibility standards.

21 101. Martinez further alleges that the (continued) presence of barriers at  
22 the Zumiez Facility is so obvious as to establish the Zumiez Defendant's  
23 discriminatory intent. On information and belief, Martinez avers that evidence of  
24 the discriminatory intent includes the Zumiez Defendant's refusal to adhere to  
25 relevant building standards; disregard for the building plans and permits issued  
26 for the Zumiez Facility; conscientious decision to the architectural layout (as it  
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<sup>11</sup> Id.; 28 C.F.R. § 36.211(b)  
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1 currently exists) at the Zumiez Facility; decision not to remove barriers from the  
2 Zumiez Facility; and allowance that the Zumiez Facility continues to exist in its  
3 non-compliant state. Martinez further alleges, on information and belief, that the  
4 Zumiez Defendant is not in the midst of a remodel, and that the barriers present  
5 at the Zumiez Facility are not isolated (or temporary) interruptions in access due  
6 to maintenance or repairs.<sup>12</sup>

7       102. The Nautica Defendant knew that these elements and areas of the  
8 Nautica Facility were inaccessible, violate state and federal law, and interfere  
9 with (or deny) access to the physically disabled. Moreover, the Nautica  
10 Defendant has the financial resources to remove these barriers from the Nautica  
11 Facility (without much difficulty or expense), and make the Nautica Facility  
12 accessible to the physically disabled. To date, however, the Nautica Defendant  
13 refuses to either remove those barriers or seek an unreasonable hardship  
14 exemption to excuse non-compliance.

15       103. At all relevant times, the Nautica Defendant has possessed and  
16 enjoyed sufficient control and authority to modify the Nautica Facility to remove  
17 impediments to wheelchair access and to comply with the Americans with  
18 Disabilities Act Accessibility Guidelines and Title 24 regulations. The Nautica  
19 Defendant has not removed such impediments and has not modified the Nautica  
20 Facility to conform to accessibility standards. The Nautica Defendant has  
21 intentionally maintained the Nautica Facility in its current condition and has  
22 intentionally refrained from altering the Nautica Facility so that it complies with  
23 the accessibility standards.

24       104. Martinez further alleges that the (continued) presence of barriers at  
25 the Nautica Facility is so obvious as to establish the Nautica Defendant's  
26 discriminatory intent. On information and belief, Martinez avers that evidence of  
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<sup>12</sup> Id.; 28 C.F.R. § 36.211(b)  
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1 the discriminatory intent includes the Nautica Defendant's refusal to adhere to  
2 relevant building standards; disregard for the building plans and permits issued  
3 for the Nautica Facility; conscientious decision to the architectural layout (as it  
4 currently exists) at the Nautica Facility; decision not to remove barriers from the  
5 Nautica Facility; and allowance that the Nautica Facility continues to exist in its  
6 non-compliant state. Martinez further alleges, on information and belief, that the  
7 Nautica Defendant is not in the midst of a remodel, and that the barriers present  
8 at the Nautica Facility are not isolated (or temporary) interruptions in access due  
9 to maintenance or repairs.<sup>13</sup>

10 105. The Levi's Defendant knew that these elements and areas of the  
11 Levi's Facility were inaccessible, violate state and federal law, and interfere with  
12 (or deny) access to the physically disabled. Moreover, the Levi's Defendant has  
13 the financial resources to remove these barriers from the Levi's Facility (without  
14 much difficulty or expense), and make the Levi's Facility accessible to the  
15 physically disabled. To date, however, the Levi's Defendant refuses to either  
16 remove those barriers or seek an unreasonable hardship exemption to excuse  
17 non-compliance.

18 106. At all relevant times, the Levi's Defendant has possessed and  
19 enjoyed sufficient control and authority to modify the Levi's Facility to remove  
20 impediments to wheelchair access and to comply with the Americans with  
21 Disabilities Act Accessibility Guidelines and Title 24 regulations. The Levi's  
22 Defendant has not removed such impediments and has not modified the Levi's  
23 Facility to conform to accessibility standards. The Levi's Defendant has  
24 intentionally maintained the Levi's Facility in its current condition and has  
25 intentionally refrained from altering the Levi's Facility so that it complies with  
26 the accessibility standards.

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<sup>13</sup> Id.; 28 C.F.R. § 36.211(b)  
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107. Martinez further alleges that the (continued) presence of barriers at the Levi's Facility is so obvious as to establish the Levi's Defendant's discriminatory intent. On information and belief, Martinez avers that evidence of the discriminatory intent includes the Levi's Defendant's refusal to adhere to relevant building standards; disregard for the building plans and permits issued for the Levi's Facility; conscientious decision to the architectural layout (as it currently exists) at the Levi's Facility; decision not to remove barriers from the Levi's Facility; and allowance that the Levi's Facility continues to exist in its non-compliant state. Martinez further alleges, on information and belief, that the Levi's Defendant is not in the midst of a remodel, and that the barriers present at the Levi's Facility are not isolated (or temporary) interruptions in access due to maintenance or repairs.<sup>14</sup>

## VI. FIRST CLAIM

### **Americans with Disabilities Act of 1990**

#### Denial of "Full and Equal" Enjoyment and Use

#### (The Napa Premium Outlets Common Area Facility)

108. Martinez incorporates the allegations contained in paragraphs 1 through 107 for this claim.

109. Title III of the ADA holds as a "general rule" that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment (or use) of goods, services, facilities, privileges, and accommodations offered by any person who owns, operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).

110. The Napa Premium Outlets Common Area Defendant discriminated against Martinez by denying "full and equal enjoyment" and use of the goods,

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<sup>14</sup> Id.; 28 C.F.R. § 36.211(b)  
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1 services, facilities, privileges or accommodations of the Napa Premium Outlets  
2 Common Area Facility during each visit and each incident of deterrence.

3 Failure to Remove Architectural Barriers in an Existing Facility

4 111. The ADA specifically prohibits failing to remove architectural  
5 barriers, which are structural in nature, in existing facilities where such removal  
6 is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term “readily  
7 achievable” is defined as “easily accomplishable and able to be carried out  
8 without much difficulty or expense.” *Id.* § 12181(9).

9 112. When an entity can demonstrate that removal of a barrier is not  
10 readily achievable, a failure to make goods, services, facilities, or  
11 accommodations available through alternative methods is also specifically  
12 prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

13 113. Here, Martinez alleges that the Napa Premium Outlets Common  
14 Area Defendant can easily remove the architectural barriers at the Napa Premium  
15 Outlets Common Area Facility without much difficulty or expense, and that the  
16 Napa Premium Outlets Common Area Defendant violated the ADA by failing to  
17 remove those barriers, when it was readily achievable to do so.

18 114. In the alternative, if it was not “readily achievable” for the Napa  
19 Premium Outlets Common Area Defendant to remove the Napa Premium Outlets  
20 Common Area Facility’s barriers, then the Napa Premium Outlets Common Area  
21 Defendant violated the ADA by failing to make the required services available  
22 through alternative methods, which are readily achievable.

23 Failure to Design and Construct an Accessible Facility

24 115. On information and belief, the Napa Premium Outlets Common  
25 Area Facility was designed or constructed (or both) after January 26, 1992—  
26 independently triggering access requirements under Title III of the ADA.

27 116. The ADA also prohibits designing and constructing facilities for  
28 first occupancy after January 26, 1993, that aren’t readily accessible to, and

1 usable by, individuals with disabilities when it was structurally practicable to do  
2 so. 42 U.S.C. § 12183(a)(1).

3 117. Here, the Napa Premium Outlets Common Area Defendant violated  
4 the ADA by designing or constructing (or both) the Napa Premium Outlets  
5 Common Area Facility in a manner that was not readily accessible to the  
6 physically disabled public—including Martinez—when it was structurally  
7 practical to do so.<sup>15</sup>

8 Failure to Make an Altered Facility Accessible

9 118. On information and belief, the Napa Premium Outlets Common  
10 Area Facility was modified after January 26, 1992, independently triggering  
11 access requirements under the ADA.

12 119. The ADA also requires that facilities altered in a manner that affects  
13 (or could affect) its usability must be made readily accessible to individuals with  
14 disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering  
15 an area that contains a facility's primary function also requires adding making  
16 the paths of travel, bathrooms, telephones, and drinking fountains serving that  
17 area accessible to the maximum extent feasible. *Id.*

18 120. Here, the Napa Premium Outlets Common Area Defendant altered  
19 the Napa Premium Outlets Common Area Facility in a manner that violated the  
20 ADA and was not readily accessible to the physically disabled public—including  
21 Martinez—to the maximum extent feasible.

22 Failure to Modify Existing Policies and Procedures

23 121. The ADA also requires reasonable modifications in policies,  
24 practices, or procedures, when necessary to afford such goods, services,  
25 facilities, or accommodations to individuals with disabilities, unless the entity  
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27  
28 <sup>15</sup> Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a  
private attorney general under either state or federal statutes.

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1 can demonstrate that making such modifications would fundamentally alter their  
2 nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

3 122. Here, the Napa Premium Outlets Common Area Defendant violated  
4 the ADA by failing to make reasonable modifications in policies, practices, or  
5 procedures at the Napa Premium Outlets Common Area Facility, when these  
6 modifications were necessary to afford (and would not fundamentally alter the  
7 nature of) these goods, services, facilities, or accommodations.

8 123. Martinez seeks all relief available under the ADA (*i.e.*, injunctive  
9 relief, attorney fees, costs, legal expense) for these aforementioned violations. 42  
10 U.S.C. § 12205.

11 124. Martinez also seeks a finding from this Court (*i.e.*, declaratory  
12 relief) that the Napa Premium Outlets Common Area Defendant violated the  
13 ADA in order to pursue damages under California's Unruh Civil Rights Act or  
14 Disabled Persons Act.

## 15 VII. SECOND CLAIM

### 16 **Disabled Persons Act**

17 (The Napa Premium Outlets Common Area Facility)

18 125. Martinez incorporates the allegations contained in paragraphs 1  
19 through 107 for this claim.

20 126. California Civil Code § 54 states, in part, that: Individuals with  
21 disabilities have the same right as the general public to the full and free use of  
22 the streets, sidewalks, walkways, public buildings and facilities, and other public  
23 places.

24 127. California Civil Code § 54.1 also states, in part, that: Individuals  
25 with disabilities shall be entitled to full and equal access to accommodations,  
26 facilities, telephone facilities, places of public accommodation, and other places  
27 to which the general public is invited.



128. Both sections specifically incorporate (by reference) an individual's rights under the ADA. See Civil Code §§ 54(c) and 54.1(d).

129. Here, the Napa Premium Outlets Common Area Defendant discriminated against the physically disabled public—including Martinez—by denying them full and equal access to the Napa Premium Outlets Common Area Facility. The Napa Premium Outlets Common Area Defendant also violated Martinez’s rights under the ADA, and, therefore, infringed upon or violated (or both) Martinez’s rights under the Disabled Persons Act.

130. For each offense of the Disabled Persons Act, Martinez seeks actual damages (both general and special damages), statutory minimum damages of one thousand dollars (\$1,000), declaratory relief, and any other remedy available under California Civil Code § 54.3.

131. He also seeks to enjoin the Napa Premium Outlets Common Area Defendant from violating the Disabled Persons Act (and ADA) under California Civil Code § 55, and to recover reasonable attorneys' fees and incurred under California Civil Code §§ 54.3 and 55.

## VIII. THIRD CLAIM

## Unruh Civil Rights Act

(The Napa Premium Outlets Common Area Facility)

132. Martinez incorporates the allegations contained in paragraphs 1 through 107 for this claim.

133. California Civil Code § 51 states, in part, that: All persons within the jurisdiction of this state are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

134. California Civil Code § 51.5 also states, in part, that: No business establishment of any kind whatsoever shall discriminate against any person in this state because of the disability of the person.



1 135. California Civil Code § 51(f) specifically incorporates (by  
2 reference) an individual's rights under the ADA into the Unruh Act.

3 136. The Napa Premium Outlets Common Area Defendant'  
4 aforementioned acts and omissions denied the physically disabled public—  
5 including Martinez—full and equal accommodations, advantages, facilities,  
6 privileges and services in a business establishment (because of their physical  
7 disability).

8 137. These acts and omissions (including the ones that violate the ADA)  
9 denied, aided or incited a denial, or discriminated against Martinez by violating  
10 the Unruh Act.

11 138. Martinez was damaged by the Napa Premium Outlets Common Area  
12 Defendant's wrongful conduct, and seeks statutory minimum damages of four  
13 thousand dollars (\$4,000) for each offense.

14 139. Martinez also seeks to enjoin the Napa Premium Outlets Common  
15 Area Defendant from violating the Unruh Act (and ADA), and recover  
16 reasonable attorneys' fees and costs incurred under California Civil Code §  
17 52(a).

## 18 IX. FOURTH CLAIM

### 19 Denial of Full and Equal Access to Public Facilities

20 (The Napa Premium Outlets Common Area Facility)

21 140. Martinez incorporates the allegations contained in paragraphs 1  
22 through 107 for this claim.

23 141. Health and Safety Code § 19955(a) states, in part, that: California  
24 public accommodations or facilities (built with private funds) shall adhere to the  
25 provisions of Government Code § 4450.

26 142. Health and Safety Code § 19959 states, in part, that: Every existing  
27 (non-exempt) public accommodation constructed prior to July 1, 1970, which is  
28 altered or structurally repaired, is required to comply with this chapter.

143. Martinez alleges the Napa Premium Outlets Common Area Facility is a public accommodation constructed, altered, or repaired in a manner that violates Part 5.5 of the Health and Safety Code or Government Code § 4450 (or both), and that the Napa Premium Outlets Common Area Facility was not exempt under Health and Safety Code § 19956.

144. The Napa Premium Outlets Common Area Defendant's non-compliance with these requirements at the Napa Premium Outlets Common Area Facility aggrieved (or potentially aggrieved) Martinez and other persons with physical disabilities. Accordingly, he seeks injunctive relief and attorney fees pursuant to Health and Safety Code § 19953.

#### X. FIFTH CLAIM

##### **Americans with Disabilities Act of 1990**

##### Denial of "Full and Equal" Enjoyment and Use

##### (The Kenneth Cole Facility)

145. Martinez incorporates the allegations contained in paragraphs 1 through 107 for this claim.

146. Title III of the ADA holds as a "general rule" that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment (or use) of goods, services, facilities, privileges, and accommodations offered by any person who owns, operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).

147. The Kenneth Cole Defendant discriminated against Martinez by denying "full and equal enjoyment" and use of the goods, services, facilities, privileges or accommodations of the Kenneth Cole Facility during each visit and each incident of deterrence.

##### Failure to Remove Architectural Barriers in an Existing Facility

148. The ADA specifically prohibits failing to remove architectural barriers, which are structural in nature, in existing facilities where such removal

1 is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term “readily  
2 achievable” is defined as “easily accomplishable and able to be carried out  
3 without much difficulty or expense.” *Id.* § 12181(9).

4 149. When an entity can demonstrate that removal of a barrier is not  
5 readily achievable, a failure to make goods, services, facilities, or  
6 accommodations available through alternative methods is also specifically  
7 prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

8 150. Here, Martinez alleges that the Kenneth Cole Defendant can easily  
9 remove the architectural barriers at the Kenneth Cole Facility without much  
10 difficulty or expense, and that the Kenneth Cole Defendant violated the ADA by  
11 failing to remove those barriers, when it was readily achievable to do so.

12 151. In the alternative, if it was not “readily achievable” for the Kenneth  
13 Cole Defendant to remove the Kenneth Cole Facility’s barriers, then the Kenneth  
14 Cole Defendant violated the ADA by failing to make the required services  
15 available through alternative methods, which are readily achievable.

16 Failure to Design and Construct an Accessible Facility

17 152. On information and belief, the Kenneth Cole Facility was designed  
18 or constructed (or both) after January 26, 1992—independently triggering access  
19 requirements under Title III of the ADA.

20 153. The ADA also prohibits designing and constructing facilities for  
21 first occupancy after January 26, 1993, that aren’t readily accessible to, and  
22 usable by, individuals with disabilities when it was structurally practicable to do  
23 so. 42 U.S.C. § 12183(a)(1).

24 154. Here, the Kenneth Cole Defendant violated the ADA by designing  
25 or constructing (or both) the Kenneth Cole Facility in a manner that was not  
26  
27  
28

1 readily accessible to the physically disabled public—including Martinez—when  
2 it was structurally practical to do so.<sup>16</sup>

3 Failure to Make an Altered Facility Accessible

4 155. On information and belief, the Kenneth Cole Facility was modified  
5 after January 26, 1992, independently triggering access requirements under the  
6 ADA.

7 156. The ADA also requires that facilities altered in a manner that affects  
8 (or could affect) its usability must be made readily accessible to individuals with  
9 disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering  
10 an area that contains a facility's primary function also requires adding making  
11 the paths of travel, bathrooms, telephones, and drinking fountains serving that  
12 area accessible to the maximum extent feasible. *Id.*

13 157. Here, the Kenneth Cole Defendant altered the Kenneth Cole Facility  
14 in a manner that violated the ADA and was not readily accessible to the  
15 physically disabled public—including Martinez—to the maximum extent  
16 feasible.

17 Failure to Modify Existing Policies and Procedures

18 158. The ADA also requires reasonable modifications in policies,  
19 practices, or procedures, when necessary to afford such goods, services,  
20 facilities, or accommodations to individuals with disabilities, unless the entity  
21 can demonstrate that making such modifications would fundamentally alter their  
22 nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

23 159. Here, the Kenneth Cole Defendant violated the ADA by failing to  
24 make reasonable modifications in policies, practices, or procedures at the  
25 Kenneth Cole Facility, when these modifications were necessary to afford (and  
26

27  
28 <sup>16</sup> Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a private attorney general under either state or federal statutes.

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1 would not fundamentally alter the nature of) these goods, services, facilities, or  
2 accommodations.

3 160. Martinez seeks all relief available under the ADA (*i.e.*, injunctive  
4 relief, attorney fees, costs, legal expense) for these aforementioned violations. 42  
5 U.S.C. § 12205.

6 161. Martinez also seeks a finding from this Court (*i.e.*, declaratory  
7 relief) that the Kenneth Cole Defendant violated the ADA in order to pursue  
8 damages under California's Unruh Civil Rights Act or Disabled Persons Act.

## 9 XI. SIXTH CLAIM

### 10 Disabled Persons Act

11 (The Kenneth Cole Facility)

12 162. Martinez incorporates the allegations contained in paragraphs 1  
13 through 107 for this claim.

14 163. California Civil Code § 54 states, in part, that: Individuals with  
15 disabilities have the same right as the general public to the full and free use of  
16 the streets, sidewalks, walkways, public buildings and facilities, and other public  
17 places.

18 164. California Civil Code § 54.1 also states, in part, that: Individuals  
19 with disabilities shall be entitled to full and equal access to accommodations,  
20 facilities, telephone facilities, places of public accommodation, and other places  
21 to which the general public is invited.

22 165. Both sections specifically incorporate (by reference) an individual's  
23 rights under the ADA. See Civil Code §§ 54(c) and 54.1(d).

24 166. Here, the Kenneth Cole Defendant discriminated against the  
25 physically disabled public—including Martinez—by denying them full and equal  
26 access to the Kenneth Cole Facility. The Kenneth Cole Defendant also violated  
27 Martinez's rights under the ADA, and, therefore, infringed upon or violated (or  
28 both) Martinez's rights under the Disabled Persons Act.



167. For each offense of the Disabled Persons Act, Martinez seeks actual damages (both general and special damages), statutory minimum damages of one thousand dollars (\$1,000), declaratory relief, and any other remedy available under California Civil Code § 54.3.

168. He also seeks to enjoin the Kenneth Cole Defendant from violating the Disabled Persons Act (and ADA) under California Civil Code § 55, and to recover reasonable attorneys' fees and incurred under California Civil Code §§ 54.3 and 55.

## XII. SEVENTH CLAIM

## Unruh Civil Rights Act

(The Kenneth Cole Facility)

169. Martinez incorporates the allegations contained in paragraphs 1 through 107 for this claim.

170. California Civil Code § 51 states, in part, that: All persons within the jurisdiction of this state are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

171. California Civil Code § 51.5 also states, in part, that: No business establishment of any kind whatsoever shall discriminate against any person in this state because of the disability of the person.

172. California Civil Code § 51(f) specifically incorporates (by reference) an individual's rights under the ADA into the Unruh Act.

173. The Kenneth Cole Defendant's aforementioned acts and omissions denied the physically disabled public—including Martinez—full and equal accommodations, advantages, facilities, privileges and services in a business establishment (because of their physical disability).

174. These acts and omissions (including the ones that violate the ADA) denied, aided or incited a denial, or discriminated against Martinez by violating the Unruh Act.

175. Martinez was damaged by the Kenneth Cole Defendant' wrongful conduct, and seeks statutory minimum damages of four thousand dollars (\$4,000) for each offense.

176. Martinez also seeks to enjoin the Kenneth Cole Defendant from violating the Unruh Act (and ADA), and recover reasonable attorneys' fees and costs incurred under California Civil Code § 52(a).

### XIII. EIGHTH CLAIM

## Denial of Full and Equal Access to Public Facilities

(The Kenneth Cole Facility)

177. Martinez incorporates the allegations contained in paragraphs 1 through 107 for this claim.

178. Health and Safety Code § 19955(a) states, in part, that: California public accommodations or facilities (built with private funds) shall adhere to the provisions of Government Code § 4450.

179. Health and Safety Code § 19959 states, in part, that: Every existing (non-exempt) public accommodation constructed prior to July 1, 1970, which is altered or structurally repaired, is required to comply with this chapter.

180. Martinez alleges the Kenneth Cole Facility is a public accommodation constructed, altered, or repaired in a manner that violates Part 5.5 of the Health and Safety Code or Government Code § 4450 (or both), and that the Kenneth Cole Facility was not exempt under Health and Safety Code § 19956.

181. The Kenneth Cole Defendant's non-compliance with these requirements at the Kenneth Cole Facility aggrieved (or potentially aggrieved)

1 Martinez and other persons with physical disabilities. Accordingly, he seeks  
2 injunctive relief and attorney fees pursuant to Health and Safety Code § 19953.

3 XIV. NINTH CLAIM

4 **Americans with Disabilities Act of 1990**

5 Denial of “Full and Equal” Enjoyment and Use

6 (The Tommy Hilfiger Facility)

7 182. Martinez incorporates the allegations contained in paragraphs 1  
8 through 107 for this claim.

9 183. Title III of the ADA holds as a “general rule” that no individual  
10 shall be discriminated against on the basis of disability in the full and equal  
11 enjoyment (or use) of goods, services, facilities, privileges, and accommodations  
12 offered by any person who owns, operates, or leases a place of public  
13 accommodation. 42 U.S.C. § 12182(a).

14 184. The Tommy Hilfiger Defendant discriminated against Martinez by  
15 denying “full and equal enjoyment” and use of the goods, services, facilities,  
16 privileges or accommodations of the Tommy Hilfiger Facility during each visit  
17 and each incident of deterrence.

18 Failure to Remove Architectural Barriers in an Existing Facility

19 185. The ADA specifically prohibits failing to remove architectural  
20 barriers, which are structural in nature, in existing facilities where such removal  
21 is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term “readily  
22 achievable” is defined as “easily accomplishable and able to be carried out  
23 without much difficulty or expense.” *Id.* § 12181(9).

24 186. When an entity can demonstrate that removal of a barrier is not  
25 readily achievable, a failure to make goods, services, facilities, or  
26 accommodations available through alternative methods is also specifically  
27 prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).